Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Petition of Puerto Rico Telephone Company Inc. For Election of Price Cap Regulation and For Limited Waiver of Pricing and Universal Service Rules	))))	WC Docket No. 07-292

**OPPOSITION
OF
WORLDNET TELECOMMUNICATIONS, INC.**

WorldNet Telecommunications, Inc. ("WorldNet") submits this opposition to the Petition of Puerto Rico Telephone Company ("PRTC") for Election of Price Cap Regulation and for Limited Waiver of Pricing and Universal Service Rules. WorldNet urges the Commission to reject PRTC's Petition on the grounds that the waiver is not justified based on the Commission's decision in the *MAG Further Notice*[1] or the "facts on the ground" in Puerto Rico. In the alternative, PRTC should be required to reduce its special access rates as a condition of the grant of the proposed waiver.

Argument

In its Petition, PRTC has requested that the Commission waive its prohibition, set forth in the *MAG Further* Notice, against rate-of-return carriers electing to convert to price cap regulation and, proposes *inter alia*, that its price cap special access rate be initialized at current rate-of-return levels. If this latter request is granted, PRTC's special access rates would be initialized at unreasonably high levels. PRTC attempts to justify

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[1] *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Report and Order and Second Further Notice of Proposed rulemaking, 19 FCC Rcd 4122, 4163-64 (2004) ("*MAG Further Notice*").

this request citing the presence of competition in the island. PRTC's petition should be rejected, or in the alternative the company should be required to lower its special access rates.

WorldNet and other competitive carriers are particularly affected by excessive special access rates. WorldNet is one of several competitive local exchange carriers operating in Puerto Rico. It was founded in 1996, the same year that the federal Telecommunications Act of 1996 Act (the "1996 Act") was passed. It has evolved and grown its business exactly as the United States Congress contemplated in the 1996 Act. WorldNet started as a pure reseller of Puerto Rico Telephone Company's ("PRTC") telecommunications services. After building a strong customer base through resale, in 2002 WorldNet migrated many of its resale customers to services provided over unbundled network element platform ("UNE-P") circuits leased from PRTC, becoming the first UNE-P provider in Puerto Rico. WorldNet has now made the substantial capital investment necessary to design and deploy its own switches and other broadband network facilities and offers a true facilities-based competitive option to consumers in Puerto Rico. Nevertheless, WorldNet has not replicated (and should not be expected to replicate) PRTC's entire network. Consequently, WorldNet must rely on the services and network facilities provided to it by PRTC in Puerto Rico for certain critical elements. WorldNet is particularly dependent upon PRTC for special access services.

Contrary to PRTC's assertion competition has not taken hold in Puerto Rico because of its insular nature. As the Board explicitly stated in its July 2006 filing at the FCC:

> First, we would caution against describing local telephone competition [in Puerto Rico] as extensive. Indeed, a review of the FCC's recent report on

> the status of competition would suggest that competition in Puerto Rico is developing. Second, at this stage in the development of competition, competitors remain highly dependent on the PRTC network and "back office" infrastructure.[2]

It is a fact that WorldNet's main, if not the sole, source of local loop, multiplexing and transport (and other related inputs) to their services is also its principal competitor, PRTC.

Nothing in PRTC's Petition justifies the waiver which PRTC seeks. The Commission indicated in the *MAG Further Notice* that the price cap rules should be amended to preclude "new carriers" from electing to convert from rate-of-return regulation to the price cap regime.[3] In so doing, the Commission relied significantly on PRTC's arguments.[4] In particular, the agency accepted PRTC's argument that "[t]he delicate balance between access rate reductions and increased universal service support amounts achieved by negotiating carriers under the CALLS Plan plainly does not anticipate any other carrier's conversion to price cap regulation, either voluntarily or involuntarily."[5] Nothing has changed.

More significantly, granting PRTC's Petition would be contrary to the Commission's basic intent in adopting a price cap regime. Under rate-of-return regulation, competitors dependent on vital inputs from PRTC can at least contest the incumbent's rates on the ground that they are unjust and unreasonable—something that they cannot do under the price cap structure. The Commission believed that this trade-off

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[2] *Verizon Communications, Inc. and America Movil, S.A. De D.V. for Consent to Transfer Control of Entities Holding Commission Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications* Act, WCB Docket No. 06-113, Reply to Opposition (filed July 31, 2006).

[3] *MAG Further Notice* at 4163.

[4] *Id.* at 4163, n 243.

[5] Comments of Puerto Rico Telephone Company, CC Docket No. 00-256, at 3 (Filed February 14, 2002)

was appropriate because price cap regulation would encourage incumbent LECs, such as PRTC, to improve their efficiency by harnessing profit-making incentives to reduce costs, invest efficiently in new plant and facilities, and develop and deploy innovative service offerings, while setting price ceilings at reasonable levels. Given PRTC's long history of disinvestment in the island,[6] the fact that PRTC is just beginning to make the investments that it should have,[7] and the fact that the penetration rates in Puerto Rico are so low,[8] now is not the time to further deregulate PRTC.

Special access is a special problem in Puerto Rico. For many years PRTC was a government-owned monopoly provider of local exchange service in Puerto Rico. Today, although the ownership of PRTC has changed, its dominant, entrenched, monopoly position in the local exchange market has not. In short, PRTC now serves approximately 1.1 million access lines in Puerto Rico, a number that constitutes nearly 90% of the wireline market. In the words of the federal district court sitting in Puerto Rico from a decision rendered earlier this year, PRTC "is [still] a monopoly provider of local exchange and switched access services in Puerto Rico."[9]

PRTC has maintained its overwhelming market share and monopoly market power despite being subject to the pro-competitive federal regulatory regime over the past ten years that has revolutionized local telephone markets on the United States mainland. According to the Telecommunications Regulatory Board of Puerto Rico

[6]From 1996 to 2003 PRT's capital expenditures were reduced from $190 million to less than $70 million. *In the Matter of Federal-State joint Board on Universal Service High-Cost Universal Service Support*, CC Docket No. 96-45, at 27-28, WC Docket No. 05-337, PRTC Comments at 8 (filed March 27, 2006)
[7] *See America Movil, S.A.B. de C.V. Annual Progress Report to the FCC*, WT Doc. No. 06-113 (filed Dec. 31, 2007).
[8] *See* PRTC Petition at 13.
[9] *See WorldNet Telecommunications, Inc. v. Telecommunications Regulatory Board of Puerto Rico*, Civil No. 04-2051 (JAF), Judgment (D.P.R. Feb. 2, 2006) (adopting in its entirety a Magistrate Judge's Report and Recommendation issued on Oct. 5, 2005).

("Board"), this has happened not because of a lack of willing competitors, insufficient efforts by competitors, or proper PRTC business efforts. Rather, according to the Board, PRTC maintained its monopoly position so by "fail[ing] to devote the resources or attention necessary to provide even the most basic services and facilities [to competitors] without substantial operational problems."[10] This failure has led the Board to conclude unequivocally that competition in Puerto Rico is "more embryonic than corresponding markets on the mainland" and that "competition in Puerto Rico has been slow to develop, and robust, facilities-based competition has yet to take root."[11]

Granting PRTC special access pricing flexibility will have significant, negative impact on competitors and the development of competition in Puerto Rico. As with most competitive carriers, access to EELs is a lynchpin in reaching customers outside of the specific wire center in which the competitive carrier is located. This is a primary method to reaching the ultimate goal of the 1996 act – enabling carriers to gain sufficient market penetration to justify facilities deployment. Several FCC rulings have made multiplexing a critical part of these EELs, such as the requirement that any route with more than 10 DS1 loops be multiplexed up to a DS3 level for unbundled transport.[12] The conversion from DS1 to DS3 requires multiplexing, which is not an unbundled network element under the FCC's rules and must therefore be purchased out of PRTC's special access tariff.[13] Providing PRTC pricing flexibility through price cap regulation would give

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[10] *See id.* (citing the Board's opposition to a motion for summary judgment filed by PRTC).
[11] *See In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket Nos. 01-338, 96-98 & 98-147, Waiver Petition of the Telecommunications Regulatory Board of Puerto Rico for Enterprise Market Switching Impairment in Defined Puerto Rico Markets at 4 (filed Dec. 30, 2003).

[12] *See* 47 C.F.R. § 51.319(e)(2)(ii)(B).
[13] *See Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Doc. No. 01-338, Report and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd. 1697,

PRTC the ability to raise the cost for multiplexing to a degree so as to effectively preclude CLECs from gaining access to multiplexing at reasonable, cost-based rates. This would limit PRTC's competitors' ability to grow its own facilities and increase competition through the use of EELs.

Furthermore, there can be no double that PRTC's special access rates are currently too high across the board in Puerto Rico. For example, consider PRTC's prices for the following elements:[14]

Element	Tariff	UNE Price
DS-1 Loop (Channel Termination)	$ 44.16	$ 18.65 - $25.38
DS-1 Transport Fixed	$ 36.80	$31.67
DS-1 Transport Mileage	$ 9.20	$ 2.59

Using an average distance between PRTC wire centers of 23.1 miles, this equates to the following DS-1 EEL rates using the two prices: $293.48 using PRTC's tariff and $116.88 using the most expensive UNE loop. In other words, PRTC's tariff is more than twice as high as the UNE rates ordered by an Arbitrator in a recent proceeding[15] and reflected in the Interconnection Arbitration between WorldNet and PRTC dated October

¶¶ 582-3 (rel. Aug. 21 2003) (discussing commingling of UNE and special access services, such as multiplexing); 47 C.F.R. Sec 51.309(e)-(g). *See also WorldNet Telecommunications, Inc., Petition for Arbitration Pursuant to Section 47 U.S.C. 252(b) of the Federal Communications Act and Section 5(b), Chapter III, of the Puerto Rico Telecommunications Act, Regarding Interconnection Rates, Terms, and Conditions with Puerto Rico Telephone Company,* Arbitrator's Report and Order, Case No. JRT-2007-AR-0001, Appendix E, p. 18 para. M (TRB Arb. July 2, 2007) (ruling that PRTC does not have to include multiplexing at UNE rates with EELs).

[14] UNE Rates from: *Landline Operations Interconnection, Unbundling, and Resale Agreement By and Between Puerto Rico Telephone Company, Inc., and WorldNet Telecommunications, Inc.*, Conforming Pricing Attachment dated August 21, 2007, Section XI ("*2007 Initial Conforming Agreement*").

[15] *See also WorldNet Telecommunications, Inc., Petition for Arbitration Pursuant to Section 47 U.S.C. 252(b) of the Federal Communications Act and Section 5(b), Chapter III, of the Puerto Rico Telecommunications Act, Regarding Interconnection Rates, Terms, and Conditions with Puerto Rico Telephone Company,* Arbitrator's Report and Order, Case No. JRT-2007-AR-0001, Appendix E, p. 18 para. M (TRB Arb. July 2, 2007) (ruling that PRTC does not have to include multiplexing at UNE rates with EELs).

3, 2007 (just 3 months ago).[16] Although multiplexing cannot be reflected in the above comparison because there is no equivalent UNE rate, it is clear that PRTC's special access rates may be significantly overstated. The mere fact that PRTC can use its special access rates to prevent competition for local services – and not simply to recover its cost of providing these services – clearly justifies the decision to insist that PRTC lower its rates so that it will not be able to use pricing flexibility to harm competition in Puerto Rico. At a minimum, the FCC should investigate PRTC's rates to ensure that they do not hamper the development of competition in Puerto Rico.

Conclusion

For the above-state reasons WorldNet urges the Commission to reject PRTC's Petition for Waiver.

Respectfully submitted,

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[16] *Landline Operations Interconnection, Unbundling, and Resale Agreement By and Between Puerto Rico Telephone Company, Inc., and WorldNet Telecommunications, Inc.*, Pricing Attachment, Sec. 1, (dated October 2, 2007) ("*2007 Interconnection Agreement*").